



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket Nos. 03-123, 10-51, 13-24; FCC 20-161; FRS 17375]

#### TRS Fund Contributions

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) proposes to expand the telecommunications relay services (TRS) Fund contribution base for support of video relay service (VRS) and Internet Protocol (IP) Relay to include intrastate, as well as interstate, end-user revenues from providers of telecommunications and Voice over IP (VoIP) services.

**DATES:** Comments are due [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Reply comments are due [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by CG Docket Nos. 03-123, 10-51, and 12-38, by either of the following methods:

- *Federal Communications Commission's website:* <https://www.fcc.gov/ecfs/filings>. Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, see document FCC 20-161 at <https://docs.fcc.gov/public/attachments/FCC-20-161A1.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Michael Scott, Consumer and Governmental Affairs Bureau, at: (202) 418-1264, or e-mail [Michael.Scott@fcc.gov](mailto:Michael.Scott@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Notice of Proposed Rulemaking (NPRM), document FCC 20-161, adopted on November 18, 2020, released on November 20, 2020 in CG Docket Nos. 03-123, 10-51, and 12-38. The full text of document FCC 20-161 is available for public inspection and copying via the Commission’s Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

#### **INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

The NPRM seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Pub. L. 104-13; 44 U.S.C. 3501-3520.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Pub. L. 107-198; 44 U.S.C. 3506(c)(4).

## SYNOPSIS

1. In the NPRM, document FCC 20-161, the Commission proposes to complete the process of updating the mechanism for the funding of Internet-based TRS. When the Commission first authorized use of the Internet to provide TRS, it decided as an interim measure that all of the costs of providing Internet-based TRS should be paid by contributors to the TRS Fund, based only on their interstate telecommunications revenue. In the *IP CTS Contributions Order*, published at 85 FR 462, January 6, 2020, the Commission recognized that this “interim” funding mechanism, which disproportionately burdens providers and users of interstate services, was no longer justifiable as a means of supporting one Internet-based form of TRS—Internet Protocol Captioned Telephone Service (IP CTS), and expanded the contribution base for that service to include intrastate as well as interstate end-user revenues. The Commission now proposes to expand the TRS Fund contribution base for the other two forms of Internet-based TRS—video relay service (VRS) and Internet Protocol Relay Service (IP Relay)—so that providers of intrastate voice communications must contribute to the TRS Fund for the support of these services as well.

2. To conform the funding of VRS and IP Relay to the requirements of section 225 of the Communications Act of 1934, as amended (the Act), and to harmonize cost recovery for these services with the cost recovery plan adopted for IP CTS, the Commission proposes to expand the TRS Fund contribution base for VRS and IP Relay to include intrastate revenues of telecommunications carriers and VoIP service providers for several reasons.

3. *First*, the current funding arrangements were authorized as interim measures to speed the development of these services and were not intended to be permanent. Twenty years later, the primary

purpose of these interim arrangements has been achieved. VRS has grown to be the second largest TRS program, and even IP Relay, with much lower demand than VRS, now accounts for more annual minutes than all state TRS programs combined.

4. *Second*, the inherent inequities and limitations of the interim contribution arrangement for these services loom much larger today, given the current size of the TRS funding requirement—more than \$1.6 billion for TRS Fund Year 2020-21. Nearly all of this amount is attributable to support for the three Internet-based relay services—IP CTS, VRS, and IP Relay. IP CTS is projected to cost the TRS Fund approximately \$1 billion and is supported by all end-user telecommunications and VoIP revenues, with a contribution factor of less than 1%. VRS and IP Relay, with projected expenditures of \$575 million in Fund Year 2020-21, are supported by a 1.33% contribution only from interstate end-user telecommunications and VoIP revenues, with no contribution from intrastate revenues. By contrast, approximately 58% of IP CTS costs are funded from intrastate end-user revenues, and 75% of the costs of relay services provided through state TRS programs are funded from intrastate sources.

5. The burden of supporting the \$575 million annual cost of VRS and IP Relay has widely disparate impacts on TRS Fund contributors, based solely on the extent of interstate usage of their services. In TRS Fund Year 2020-21, for example, providers of interstate-only services must contribute approximately 1.33% of their annual end-user revenues to support VRS and IP Relay. By contrast, service providers for which only 42% of end-user revenues are interstate (the industry average) contribute only 0.56% of annual end-user revenues to support these services. And providers of intrastate-only services, of which there are at least 200, contribute nothing to support VRS and IP Relay, despite consumers' use of VRS and IP Relay to make intrastate calls.

6. *Third*, the recovery of VRS and IP Relay costs based on interstate revenues alone appears likely to cause distortions in the pricing of interstate and intrastate voice services due to inaccurate market signals regarding their relative costs. As the Commission has recognized in various contexts, applying artificial regulatory distinctions or other disparate treatment to providers of similar services may create unintended market distortions, which can reduce the effectiveness of competition in ensuring efficient pricing of telecommunications services.

7. *Fourth*, the total amount of end-user revenues from which TRS Fund contributions can be

drawn has been steadily decreasing over time, worsening the impact of the current funding arrangement on interstate service providers and users and increasing any existing distortion between intrastate and interstate service prices. Expanding contributions to support VRS and IP Relay to encompass intrastate as well as interstate revenues would strengthen the sustainability of these services.

8. The Commission seeks comment on this proposal and its costs and benefits. Are there additional aspects of the current state of the VRS and IP Relay programs that support either altering or maintaining the current interstate-only funding mechanism? Are there differences between those programs and IP CTS, such that the interim funding arrangement for VRS and IP Relay should be retained, notwithstanding the facts stated above and the Commission's 2019 determination that the interim plan was no longer suitable for IP CTS?

9. *Legal Authority.* Section 225 of the Act requires the Commission to ensure that both "interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner." The Act directs the Commission to adopt, administer, and enforce regulations governing the provision of interstate and intrastate TRS, including rules on cost separation, which "shall generally provide" that interstate TRS costs are recovered from interstate services and intrastate TRS costs are recovered from the intrastate jurisdiction. Section 225 of the Act also authorizes, but does not require, the establishment of state-administered TRS programs and funding mechanisms, subject to approval by the Commission.

10. The Commission believes it has statutory authority to include the intrastate end-user revenues of telecommunications carriers and VoIP service providers in the calculation of TRS Fund contributions to support VRS and IP Relay, to the extent that these services continue to be funded solely through the TRS Fund. Section 225 of the Act expressly directs the Commission to ensure that both interstate and intrastate TRS are available and grants the Commission broad authority to establish regulations governing both interstate and intrastate TRS, including TRS cost recovery. Congress expressly carved section 225 out from the Act's general reservation of state authority over intrastate communications, and responsibility for administering TRS is shared with the states only to the extent that a state applies for and receives Commission approval to exercise such authority. The Commission believes this analysis equally supports the Commission's authority to adopt the same approach to funding an appropriate share of the costs of VRS and IP Relay from intrastate revenues. The Commission seeks

comment on the above analysis and assumptions. Are there differences between the provision of IP CTS and the provision of VRS and IP Relay that could affect the Commission's statutory analysis?

11. *Implementation.* The Commission proposes to apply a separate contribution factor for VRS and IP Relay which is applied to all (interstate and intrastate) end-user revenues of each TRS Fund contributor, using a single contribution factor to determine the total level of support required for all three services from a contributor's total intrastate and interstate end-user revenues. To implement this approach, the TRS Fund administrator would determine a revenue requirement for all three services, based on the applicable compensation rates and projected demand. Next, based on the total intrastate and interstate end-user revenue data reported by TRS Fund contributors on Forms 499-A, the TRS Fund administrator would compute a separate TRS Fund contribution factor for the three services, by dividing the revenue requirement by contributors' total intrastate and interstate end-user revenues.

12. The Commission tentatively concludes that implementation of this approach does not require separation of VRS and IP Relay costs, because a single contribution factor would apply to contributors' total interstate and intrastate end-user revenues, regardless of the proportion of VRS and IP Relay minutes and costs that might be deemed interstate or intrastate. Accordingly, it would not be necessary to refer this matter to a Federal-State Joint Board, absent a state request to include VRS or IP Relay in state program offerings. The Commission seeks comment on this implementation proposal and tentative conclusion. Is the above approach reasonable, equitable to all providers, and consistent with the requirements of section 225 of the Act? What are the costs and benefits of this approach? How should a state opting to include VRS or IP Relay in its state TRS program affect the Commission's analysis?

13. Are there alternative implementation approaches the Commission should consider? Commenters proposing an alternative approach should discuss the costs and benefits of their preferred approach.

14. *Inclusion of VRS and IP Relay in State Programs.* To date, no state TRS program provides VRS or IP Relay, and the Commission believes that some of the same impediments to states administering and funding intrastate IP CTS may exist for intrastate VRS and IP Relay.

15. The Commission nonetheless seeks comment on how the Commission should proceed in the event that a state requests certification to include VRS or IP Relay in a state TRS program. What

modifications to the cost recovery method described above would be necessary to ensure that cost recovery is fairly apportioned and that TRS Fund contributors providing service within the affected state are not subjected to double payment of their share of intrastate VRS or IP Relay costs? Should the Commission refer such state requests to a Federal-State Joint Board, in order to make an appropriate determination regarding separation of intrastate and interstate TRS costs?

16. *Economic Impact.* Expanding the TRS Fund contribution base for VRS and IP Relay to include intrastate revenues would likely reduce the TRS funding contributions that are passed on by contributing providers to users of interstate telecommunications and VoIP services, and concomitantly increase the contributions that are passed on to users of intrastate services. This broadening of the base on which TRS Fund contributions are made would tend to reduce any current distortions in the relative prices of intrastate and interstate services, increasing economic efficiency by more accurately signaling relative costs to purchasers, which in turn will generate more efficient provider investment signals. The change the Commission proposes would cause some one-off implementation costs, but with the exception of any repricing, most of these would be *de minimis*, since current TRS Fund administrative processes would be left intact. Any repricing costs, being one-off, are likely to be small relative to the ongoing benefits such repricing would bring. Thus, the Commission tentatively concludes the benefits of more efficient production and consumption would exceed any implementation costs of the proposed rule change. The Commission seeks comment on this. Broadening the base on which TRS Fund contributions are based also would ensure fair treatment of intrastate and interstate service providers and users in TRS funding and the long-term sustainability of the TRS Fund. This justifies the redistribution the Commission's action would impose on interstate and intrastate service providers and their customers. The Commission seeks comment on this analysis.

17. *Compliance date.* In the *IP CTS Contributions Order*, the Commission required intrastate carriers and VoIP service providers to contribute revenue to fund IP CTS starting with TRS Fund year 2020-21, to allow reasonable time for the Commission to amend relevant forms, for any carriers and VoIP service providers that have only intrastate revenue to register and prepare for submission of IP CTS contributions to the TRS Fund administrator, and for the TRS Fund administrator and Universal Service Administrative Company (USAC) to process such registrations. In setting that

timeline, the Commission afforded seven months for these steps to be taken. If the Commission moves forward with implementing its proposed rule change, carriers and VoIP service providers that have only intrastate revenue will already be registered to submit contributions to the TRS Fund given the Commission's earlier change to the IP CTS cost recovery rules. Nevertheless, the Commission will still need to amend the instructions for the relevant forms, and it would be administratively efficient to tie the compliance date to the start of new TRS Fund year. The Commission seeks comment on whether a similar timeline should apply to affected providers if the proposed rule change is adopted, or whether some other timeline would be more appropriate.

### **Initial Regulatory Flexibility Analysis**

18. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the NPRM. The Commission will send a copy of the NPRM to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

### *Need For, and Objectives of, the Proposed Rules*

19. In the NPRM, the Commission proposes to expand the TRS Fund contribution base for VRS and IP Relay to require contributions based on a percentage of interstate, international, *and intrastate* end-user revenues. The Commission also seeks comment on how it should proceed in the event that a state requests certification to include VRS or IP Relay in a state TRS program.

### *Legal Basis*

20. The authority for the proposed rulemaking is contained in sections 1, 2, and 225 of the Act, as amended, 47 U.S.C. 151, 152, 225.

### *Small Entities Impacted*

21. If the proposed rule amendments are adopted, various categories of providers of telecommunications and VoIP services may have to increase their contributions to the TRS Fund, including Wired Telecommunications Carriers, Telecommunications Resellers, Wireless



Telecommunications Carriers (except Satellite), and All Other Telecommunications.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

22. Because TRS Fund contributors' intrastate end-user revenues are currently included in the contribution base for IP CTS, the Commission's existing rules require telecommunications carriers and VoIP providers that provide intrastate telecommunications services to register with the TRS Fund administrator and submit contribution payments to the TRS Fund. The NPRM proposes no new reporting, recordkeeping, or other compliance requirements.

*Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered*

23. If the Commission adopts its proposal to require TRS Fund contributions from intrastate end-user revenue to support VRS and IP Relay, the contributions required from interstate and international end-user revenue would be correspondingly reduced. As a result, while some small entities may be required to make increased payments to the TRS Fund, other small entities would experience a reduction in TRS Fund contributions. The proposal would not increase the total contributions required, and the additional costs incurred by some small entities would be offset by cost reductions for other small entities and by the benefits of appropriately allocating the funding of the provision of VRS and IP Relay among all telecommunications carriers and VoIP providers. By including intrastate revenues in the contribution base, the VRS and IP Relay programs, including the providers and users, would be supported by a broader, more sustainable contribution base.

24. The Commission seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the NPRM. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

*Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals*

25. None.

**List of Subjects in 47 CFR Part 64**

Individuals with disabilities, Telecommunications, Telecommunications relay services.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

## Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend Title 47 part 64 as follows:

### **Part 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 276, 403(b)(2)(B), (c), 616, 620, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

#### **§ 64.604 [AMENDED]**

2. Amend § 64.604 by revising paragraphs (c)(5)(ii) and (c)(5)(iii)(A) to read as follows:

#### **§ 64.604 Mandatory minimum standards.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph, costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate IP CTS, VRS, and IP Relay, if not provided through a certified state program under § 64.606, shall be recovered from all subscribers for every interstate and intrastate service, using a shared-funding cost recovery mechanism.

(iii) \* \* \*

(A) *Contributions.* Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund, as described herein:

(I) For the support of TRS other than IP CTS, VRS, and IP Relay, on the basis of interstate end-user revenues; and

(2) For the support of IP CTS, VRS, and IP Relay on the basis of interstate and intrastate revenues.

Contributions shall be made by all carriers who provide interstate or intrastate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international, and resale services.

\* \* \* \* \*

[FR Doc. 2021-04484 Filed: 3/18/2021 8:45 am; Publication Date: 3/19/2021]